

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

ENTROPIC COMMUNICATIONS, LLC,

Plaintiff,

v.

CHARTER COMMUNICATIONS, INC.,

Defendant.

Case No. 2:22-cv-00125-JRG

JURY TRIAL DEMANDED

**CHARTER COMMUNICATIONS, INC.'S OPPOSED MOTION TO
AMEND THE DOCKET CONTROL ORDER**

Defendant Charter Communications, Inc. (“Charter”) hereby moves to amend the Docket Control Order (Dkt. 40), in its current form of the Sixth Amended Docket Control Order (Dkt. 195), to extend the deadline to complete expert discovery by one (1) day.

Good cause exists for this one-day extension to permit Charter to respond to Entropic’s supplemental rebuttal infringement report one week after Entropic’s expert served his supplemental infringement report.

The parties have previously agreed to amend the Docket Control Order six times to, *inter alia*, permit the parties to supplement their expert reports based on subsequent discovery and to respond to such supplementation as further explained in the table below. (*See* Dkts. 39, 72, 88, 153, 164, & 182.)

Most recently, the parties filed an Agreed Motion to Modify the Docket Control Order on September 18, 2023 to extend the deadline to complete expert discovery by four (4) days; to extend the September 15, 2023 date for Entropic’s damages expert’s supplemental report to September 19, 2023; and to extend the date for Charter’s damages expert’s supplemental rebuttal report to September 25, 2023. (Dkt. 182 at 1.) In making that motion, the parties *agreed* that Entropic

“may also serve a short supplemental expert report from Dr. Kramer to address the same limited issues from new discovery” and “that if this occurs then Charter’s expert Dr. Almeroth may serve a short rebuttal to Dr. Kramer’s report.” (*Id.*)

However, no date was agreed on for Dr. Kramer’s and Dr. Almeroth’s supplemental reports. Dr. Kramer served his supplemental report on September 19, 2023.

Cognizant of upcoming deadlines, *e.g.*, relating to the pretrial order, Charter informed Entropic via email at 10:30PM ET on September 25 that it would serve Dr. Almeroth’s supplemental rebuttal report on September 27 and attached a corresponding proposed Agreed Motion to Amend the Docket Control Order to extend expert discovery to September 27. (Long Decl., Ex. A at 3.) It was, however, late in the day and Entropic did not respond. The next day, on September 26, Dr. Almeroth completed his report ahead of schedule and Charter emailed Entropic at 12:58PM ET stating it would be serving his report that day and attaching a revised proposed Agreed Motion to Amend the Docket Control Order to reflect the new date. (*Id.* at 2.) At 4:30PM ET, Entropic responded to Charter stating that it did not agree to the extension but that it was willing “to meet and confer on this issue and see if the parties can reach agreement.” (*Id.* at 1–2.)

At the 6:30PM ET September 26 telephonic meet and confer, Charter explained that it would serve Dr. Almeroth’s supplemental report pursuant to the parties’ prior Agreed Motion to Amend Docket Control Order (Dkt. 182) and that there was no date set for either Dr. Kramer’s supplemental report or Dr. Almeroth’s supplemental rebuttal report in that motion. Entropic stated that its position was that expert discovery nonetheless closed on September 25. Entropic explained, however, that it opposed Charter’s one day extension because Charter had previously, on September 22, stated that it would oppose Entropic seeking leave from the Court to file an

unrelated motion to compel discovery out of time. (Long Decl. at ¶¶ 5, 6.) Entropic would agree to the relief requested in this motion only if Charter would agree to permit Entropic to file that unrelated motion to compel out of time. (*Id.* at ¶ 6.) Because the parties had already agreed Charter was entitled to supplement its expert report, and Charter believes that the unrelated motion to compel is untimely, Charter refused.

Charter served Dr. Almeroth's supplemental rebuttal report on September 26, 2023, one week after Entropic's own expert served his supplemental report to which it responds. Charter now seeks to amend the Docket Control Order to extend expert discovery by one day to accommodate this previously agreed report. This extension will not affect any of the other remaining deadlines or the trial date in this action and is consistent with the parties' prior agreement to allow the report and prior practice of accommodating extensions of time for both parties to serve supplemental expert reports as noted in the table below.

August 28, 2023	<p>The parties filed an Agreed Motion to Modify the Docket Control Order where they agree to extend the deadline to complete expert discovery by fourteen days to allow:</p> <p>(1) Entropic's damages expert to supplement his expert report;</p> <p>(2) Charter's damages expert to supplement his expert report in rebuttal "at a date to be agreed upon after Entropic's supplemental report is served";</p> <p>(3) Entropic's expert Dr. Sourì to serve a supplemental report on infringement; and</p> <p>(4) Charter's expert Dr. Almeroth to supplement his expert report in rebuttal.</p> <p>(Dkt. 153 at 2.)</p>
September 7, 2023	<p>Charter sought a one day extension from Entropic to serve its damages expert's supplemental rebuttal report. (Long Decl., Ex. B at 8.)</p> <p>Entropic agreed and, at the same time, requested that its damages expert be allowed to serve an additional supplemental report in light of a third party deposition permitted by the Court. (<i>Id.</i> at 7.)</p>

September 7, 2023	<p>The parties filed an Agreed Motion to Amend the Docket Control Order to extend the deadline to complete expert discovery by an additional fourteen (14) days, <i>inter alia</i>, to allow:</p> <p>(1) Entropic’s damages expert to supplement his expert report again no later than September 15, 2023; and</p> <p>(2) Charter’s damages expert to provide a second supplemental report in rebuttal no later than September 21, 2023.</p> <p>(Dkt. 164 at 2.)</p>
September 15, 2023	<p>The day Entropic’s damages expert’s supplemental report was due, Entropic sought a one day extension to serve its report. (Long Decl., Ex. B at 4.)</p> <p>Charter agreed and requested a corresponding extension for its damages expert’s supplemental rebuttal report to September 25, 2023. (<i>Id.</i>)</p> <p>Entropic agreed and stated that it “may serve a very short supplement from Dr. Kramer.” (<i>Id.</i> at 2.)</p> <p>Charter agreed and stated that it would “like to reserve a rebuttal report for Dr. Almeroth and added a sentence in the [proposed Agreed Motion to Amend the Docket Control Order] saying as much.” (<i>Id.</i> at 1.)</p>

Accordingly, Charter respectfully request that the Court amend its Docket Control Order to extend the deadline to complete expert discovery by one (1) day. This extension is reflected in the proposed Amended Docket Control Order submitted herewith.

Dated: September 26, 2023

Respectfully submitted,

/s/ Daniel Reisner by permission Elizabeth Long

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was filed electronically in compliance with Local Rule CV-5(a). Therefore, this document was served on all counsel who are deemed to have consented to electronic service on this the 26th day of September, 2023.

/s/ Elizabeth Long
Elizabeth Long

CERTIFICATE OF CONFERENCE

The undersigned hereby certifies pursuant to Local Rule CV-7(i) that the parties met and conferred by telephone on September 26, 2023 and counsel for Entropic stated that it was opposed to the motion.

/s/ Elizabeth Long
Elizabeth Long